IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

Crl.Rev.Pet.No. 307 of 1999()

CRA.29/1999 of SESSIONS COURT, THRISSUR
CC.24/1996 of CHIEF JUDICIAL MAGISTRATE COURT, THRISSUR

REVN. PETITIONER - APPELLANT - ACCUSED:

MOOSA KUNJAMI, PALAKAYIL HOUSE,
P.O. PUNNAYOOR, VADAKKEKAD (VIA),
THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.S.R.MANOJ

RESPONDENTS - RESPONDENTS - COMPLAINANT & STATE:

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1. E.J. CLEETUS, S/O.. JOHN, ELUVATHINGAL HOUSE
ROSE GARDENS, PERINGAVU, THRISSUR.

2. STATE OF KERALA, REPRESENTED BY PUBLIC
PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU
BY PUBLIC PROSECUTOR SHRI MOHAMED PUZHAKKARA

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 307 OF 1999

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Dated this the 16th day of January, 2007

O R D E R

Accused in C.C. NO. 24 of 1996 on the file of Chief Judicial Magistrate, Thrissur is the Revision Petitioner. Revision petitioner was found guilty of an offence punishable under Section 138 of the Negotiable Instruments Act, convicted and sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.30,000/-. In default of payment of fine, petitioner was directed to undergo simple imprisonment for a further period of one month. It was further ordered that if fine amount is paid or realised, the same shall be given to the complainant. Revision Petitioner filed Crl. Appeal No.29 of 199 before the Sessions Court, Thrissur. Learned Sessions Judge confirmed the conviction but modified the sentence. Substantive sentence imposed was set aside. Petitioner was directed to pay a fine of Rs.32,000/- and in default of payment of fine, to undergo rigorous imprisonment for 45 days. It was also ordered that if fine amount is paid or realised, Rs.30,000/- was directed

to be paid to the complainant. Hence this Criminal Revision Petition challenging the order passed by the learned Sessions Judge. Subsequently, execution of sentence was suspended by this Court by a conditional order.

2. First respondent filed a complaint alleging that revision petitioner borrowed an amount of Rs.30,000/- from him and issued Exhibit P1 cheque in discharge of a legally recoverable debt. It is further averred that when the cheque was presented for payment, the same was dishonoured and returned for want of sufficient funds in the account maintained by revision petitioner with the Bank. Notice was issued informing dishonour and non-payment of the amount covered by the cheque.

3. When petitioner appeared before the learned Magistrate, copies of relevant documents were furnished to him. Substance of accusation was read over and explained to him. He understood the same and pleaded not guilty. On the side of prosecution P.Ws.1 to 3 were examined and Exhibits P1 to P7 proved and marked. After prosecution evidence was over, petitioner was questioned under Section 313 Criminal Procedure

Code. He denied all incriminating circumstances brought out against him. But no defence evidence was adduced. Learned Magistrate, accepting the evidence of the complainant, found the petitioner guilty, convicted and sentenced him as aforesaid. P.W.1 is the complainant and P.Ws.2 and 3 are the Managers of the drawer and drawee Banks. Evidence adduced by the complainant clearly establishes that Exhibit P1 cheque was issued by the revision petitioner to the complainant and when the same was presented for payment, it was dishonoured for want of sufficient funds in the account maintained by the revision petitioner. Though the revision petitioner denied the transaction, he did not adduce any evidence in support of his contention. His case was that he entrusted a signed blank cheque as a security for the transaction between himself and the complainant. Courts below had considered the entire evidence also. It was found that Exhibit P1 cheque was issued by the revision petitioner and when the same was presented for payment, it was dishonoured and returned. Notice of dishonour was intimated to the petitioner. But the petitioner did not repay

the amount borrowed. So the finding of the courts below that the petitioner had committed the offence under Section 138 of the Negotiable Instruments Act is correct and does not call for any interference. I confirm the same.

4. Though the trial court sentenced the petitioner to undergo simple imprisonment for one month, the appellate court modified the same. Substantive sentence was set aside and petitioner was directed to pay a fine of Rs.32,000/-. In default of payment of fine, petitioner was directed to undergo rigorous imprisonment for 45 days.

5. Considering the entire facts and circumstances of the case, I do not find any reason to interfere with the fine imposed on the petitioner. But the default sentence imposed is excessive. So it can be modified as simple imprisonment for one month.

6. In the result, Criminal Revision Petition is disposed of in the following manner:

Conviction of the revision petitioner is confirmed. Fine imposed is also confirmed. Default sentence of 45 days' rigorous imprisonment imposed on the petitioner is modified and

reduced as simple imprisonment for one month.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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CRL. R.P. NO. 307 OF 1999

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O R D E R

16TH JANUARY, 2007